SANITARY SEWER DEVELOPMENT CONTRACT

THIS SANITARY SEWER DEVELOPMENT CONTRACT ("**Contract**") is made effective the **27th** day of **August**, 2004 (the "**Effective Date**"), by and between the Town of Collierville, a municipality organized and existing under the laws of the State of Tennessee (the "**Town**") and Spring Creek, L.L.C., a Tennessee limited liability company, Trail Partners, LLC, a Tennessee limited liability company, and SCRC Golf Course Land, LLC, a Tennessee limited liability company (collectively the **"Developer"** and the **"Owner"**).

WITNESSETH:

WHEREAS, the Developer is the owner of a tract of land zoned "AG", which contains approximately seven hundred eighty (780) acres and the Developer desires to improve and develop said property into a development to be known as **SPRING CREEK RANCH PLANNED DEVELOPMENT** whose case number is PD-306CO and Spring Creek Golf Course pursuant to Shelby County Special Use Permit No. SUP97-222CO (hereinafter collectively referred to as the "**P.D.**"); and

WHEREAS, the Developer gained approval to develop the P.D. through the Shelby County Office of Planning and Development and the Shelby County Commission; and

WHEREAS, the P.D. is located within the annexation reserve boundary of the Town; and

WHEREAS, the Town has agreed to allow sanitary sewer flow from the P.D. to be treated at the Town's Shelton Road Wastewater Treatment Plant; and

WHEREAS, the Developer is required to design and install all necessary sanitary sewer improvements in connection with the P.D., as such improvements are described herein and as defined hereinbelow as the Sewer Improvements, to collect and transport wastewater from the individual structures within the P.D. to the Town's existing sewer collection system; and

WHEREAS, the Town is willing to enter into this Contract with the Developer relative to the Sewer Improvements and the Town is willing to provide sewer services to the owners of residences and business establishments to be constructed in the P.D. in accordance with the Town's standard policies and applicable rates; and

WHEREAS, the Town is willing to approve this Contract subject to the Developer's compliance with applicable existing laws, ordinances, and regulations and the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants of the parties herein contained, it is understood and agreed as follows:

DEFINITIONS

1. The following words and phrases, when used in this Contract, shall have the meanings given to them in this Section unless the context clearly indicates otherwise:

a. **"Codes"** shall mean (i) the Collierville Construction Specifications; (ii) the Collierville Subdivision Regulations, and (iii) other applicable Codes and Ordinances of the Town. Items (i) through (iii) are hereby made a part of this Contract by reference. References herein to the Codes are to those in effect on the Effective Date unless amendments are hereafter made which apply to all improvements or projects regardless of their date of commencement and/or completion of construction.

b. **"Construction"** shall mean (i) the permanent fastening and positioning of construction materials and/or (ii) extensive grading (including demolishing or removing existing structures necessary for the development of the P.D.).

c. **"Final Acceptance"** shall mean and be evidenced by the final release of the Security by the Board of Mayor and Aldermen for each particular phase of the P.D., which release shall be contingent upon an inspection by the Town Engineer or his designee of the Primary System and the Secondary System, respectively, pursuant to which no defects or failures are found and the concurrence of the Board of Mayor and Aldermen with such findings of the Town Engineer or his designee.

d. **"Primary System"** shall mean an appropriately sized sewer force main to be installed by the Developer to run southwardly along the right-of-way line of Collierville-Arlington Road and tie into the Town's sewer system at an existing sanitary sewer manhole north of the Shelton Road intersection, together with the major pump station to be installed by the Developer to serve the sewer flow from the Secondary System (as hereinafter defined). Further, if, within seven (7) years of the first operation of the Sewer Improvements (as hereinafter defined), odor control facilities become needed due to persistent noxious odors emanating from the aforesaid sewer lines and/or pump station, such facilities shall be installed by the Developer not to exceed Forty Thousand and No/100 Dollars ($40,000.00) and same are included within the term "Primary System".

e. **"Project"** shall mean the design and installation of the Sewer Improvements (as defined hereinbelow).

f. **"Project Site"** shall mean the locations where the Developer is to install the Sewer Improvements and shall include the P.D. and the residences and business establishments to be constructed in the P.D., excluding, in all cases, the house service line from and including the cleanout to the residences or business establishments to be served with sewer.

g. **"Secondary System"** shall mean the system to be installed by the Developer to provide sewer service for all properties permitted to be developed in the P.D. that are not served by individual septic tanks. Upon completion of its construction, the Secondary System shall then tie into the Primary System.

h. **"Security"** shall mean: (i) with respect to the Primary System, a letter of credit, the amount of which shall be Twenty Thousand and No/100 Dollars ($20,000.00); and (ii) with respect to the Secondary System, a letter of credit in the total amount of Ten Thousand and No/100 Dollars ($10,000.00) per phase. Said letters of credit shall have an

expiration date of one (1) year but automatically renewable for successive one (1) year periods unless the issuer gives the Town notice, in writing, within ninety (90) days prior to its expiration date, at which time the Town can draw up to the full face value of said letters of credit, and said letters of credit shall provide that the physical presence of a representative of the Town shall not be required for presentation and that litigation regarding same shall be held in a court in Shelby County, Tennessee.

i. "**Sewer Development Fee**" shall mean the combination of the "Sewer Treatment Plant Construction and Maintenance Fee" and the "Interceptor Sewer Basin Fee" as such fees are adopted by and subject to standard adjustment by annual resolution of the Board of Mayor and Aldermen of the Town for all residential developments.

j. "**Sewer Improvements**" shall mean individually and collectively, as the context indicates, the Primary System and the Secondary System; provided, however, that the term "Sewer Improvements" shall not include the house service line running to and from the service lateral, but shall include the tap point and service laterals which connect the sewer mains in the streets in the P.D. to the house service lines.

k. "**Substantial Completion**" shall mean when the Developer has completed all required Sewer Improvements relative to the P.D. phase under construction, but prior to Final Acceptance.

GENERAL CONDITIONS

2. Approval of Plans. The Developer shall obtain the approval of the Town Engineer and Development Director for the Sewer Improvements prior to the start of construction of any portion thereof.

3. General Construction Standards.

   a. The Developer shall construct the Sewer Improvements in accordance with the approved sewer construction plans and in accordance with the applicable requirements for sanitary sewer construction contained in the Codes. References herein to the Codes are to those in effect on the Effective Date unless amendments are hereafter made which apply to all improvements or projects regardless of their date of commencement and/or completion of construction.

   b. The definition of Sewer Improvements provides that if, within seven (7) years of the first operation of the Sewer Improvements, odor control facilities become needed due to persistent noxious odors emanating therefrom, the Developer will expend not more than Forty Thousand and No/100 Dollars ($40,000.00) for design and to install such facilities. The Town will give the Developer notice of the need for construction of such facilities and the Developer will commence installation thereof within ninety (90) days and complete same within one hundred eighty (180) days from the date of commencement. The obligation to install such odor control system shall be secured by the Security then posted by the Developer hereunder.

c. The laws and regulations of the State of Tennessee shall at all times be complied with by the Developer and the Town relative to their respective obligations under this Contract. To the extent that the approval of Shelby County, Tennessee may be required relative to the subject matter of this Contract, the Developer shall be required to secure such approval.

4. Specific Criteria Applicable to the Installation of the Sewer Improvements.

a. Subject to the limitations contained in this Section 4.a., the parties hereby agree that the Sewer Improvements shall be sized and utilized only for the P.D. Due to the inherent difficulties of tying into either of the force main systems contemplated as a part of the Sewer Improvements, the parties hereby further agree that the sole exception to the limitation that the Sewer Improvements shall be utilized only for the P.D. shall be that, in the event the Town, after annexation of areas north of the Wolf River, experiences a failing septic system, the Town could, at the Town's own expense and without unreasonable interruption of the service to the P.D., tie into the Sewer Improvements. Nothing contained herein shall preclude the Town from recovering such expense from the owner of the property to be served by tying into the Sewer Improvements.

b. As appropriate, the Town will assist the Developer in making arrangements with the Tennessee Department of Transportation (TDOT) and coordinating the extensions of the sewer lines installed in connection with the Sewer Improvements with TDOT; provided, however, that any such assistance provided by the Town shall be done at no expense to the Town; and provided further, that the Developer assumes sole responsibility for all expenses incurred by the Town in obtaining any easements over private property that may be required in connection with the installation of the Sewer Improvements. If an easement for the Sewer Improvements is necessary over private property, the Town agrees to exercise its right of eminent domain to obtain, at Developer's expense, an easement over and across the land necessary to complete the Sewer Improvements.

c. The Town hereby agrees to reserve sewer capacity for a maximum of 520 lots within the P.D., which is the number of lots presently permitted within the P.D. The Town will allow a maximum of 300 lots to be tied into the Town's sewer system within eighteen (18) months after the construction of the Primary System. The balance of the 520 lots, or 220 lots, could be tied into the Town's sewer system via the Sewer Improvements at any time after the completion of initial eighteen (18) month period described hereinabove.

d. The Developer will pay all costs associated with the Sewer Improvements and hereby agrees to relinquish ownership of the Sewer Improvements to the Town without charge upon Final Acceptance by the Town, which Final Acceptance shall be granted as segments of the Sewer Improvements satisfy the criteria herein for Final Acceptance. The Town, upon its acceptance of the Sewer Improvements, will accept responsibility for the maintenance and operation of the Sewer Improvements.

e. The Developer hereby agrees that it will grant to the Town an easement for all Sewer Improvements located within the P.D. prior to Final Acceptance. At no time, shall the Town be responsible for any settlement or subsidence of any streets or property in the

P.D. except such that occurs in connection with maintenance, repair, or inspection of the Sewer Improvements by the Town; provided further that the Town's responsibility for maintenance extends only to the Sewer Improvements and not beyond the service laterals. The Town shall not be responsible for maintenance of the cleanouts, which will connect the house service lines to the service laterals. The Town shall be responsible for repairing any damage to streets occasioned by its need to maintain the Sewer Improvements. All cleanouts shall be installed by the permit holders.

f. Building permits for individual lots will not be sought until acceptance by the Town of the Sewer Improvements serving said lot.

5. The Developer shall also construct the Sewer Improvements in accordance with the applicable standards of the following, which are also made a part of this Contract by reference:

(a) American Society for Testing Materials (ASTM);

(b) Occupational Safety and Health Administration (OSHA);

(c) Americans with Disabilities Act (ADA);

(d) Tennessee Department of Transportation (TDOT);

(e) American National Standards Institute (ANSI);

all as are in effect on the Effective Date unless amendments are hereafter made which apply to all improvements or projects regardless of their date of commencement and/or completion of construction.

OWNERSHIP

6. The Developer agrees it shall have no claim, direct or implied, in the title or ownership of the Sewer Improvements specified in this Contract that are to be dedicated or conveyed to the Town for perpetual maintenance by the Town following Final Acceptance. The Town, upon Final Acceptance, will take full title to the Sewer Improvements. Maintenance responsibilities of the Developer after Substantial Completion and prior to Final Acceptance are provided for hereinafter.

7. Restrictions on Transfer.

a. Until all obligations of the Developer under this Contract have been fully met, the Developer agrees that neither the P.D. nor any portion thereof, except for individual lots or parcels sold to others for use, will be transferred without first providing the Town with notice of when the proposed transfer is to occur and who the proposed transferee is, along with the appropriate address and telephone number of the proposed transferee.

b. If it is the proposed transferee's intention to develop the P.D. or any portion thereof in accordance with this Contract, the Developer agrees to furnish the Town with an

assumption agreement by which the transferee agrees to perform the obligations required under this Contract that are applicable to the property to be acquired by the transferee. Unless otherwise agreed by the Town, the Developer will not be released from any of its obligations hereunder by virtue of such transfer and the Developer and the transferee both shall be jointly and severally liable to the Town following such transfer for all obligations hereunder that are applicable to the property transferred. Said assumption agreement will be subject to the approval of the Town Attorney.

c. If the Developer and the transferee intend to enter into an assumption agreement whereby the Developer is released from its obligations under this Contract, the Developer must present the assumption agreement to the Town for consideration and approval by the Board of Mayor and Aldermen. In the event of such approval, the transferee will be required to furnish new Security acceptable to the Town.

d. If it is not the proposed transferee's intention to develop the P.D. or any portion thereof in accordance with this Contract, the transferee must satisfy all applicable requirements of all governments having jurisdiction, including review by and approval of all appropriate Boards and Commissions.

e. The Developer understands that if it transfers the P.D. or any portion thereof without providing the notice of transfer and assumption agreement as required herein, it will be in breach of this Contract and the Town may require that all work be stopped relative to this Contract.

8. The Developer agrees to furnish, on demand, satisfactory evidence that it has the lawful right to enter into this Contract for the purposes herein contained. Any Security for the Developer's obligations hereunder is subject to the approval of the Town Attorney.

9. Duration of Obligations. The obligations of the Developer hereunder shall run with the land until the Developer's obligations have been fully met. Any party taking title to the P.D., or any part thereof, shall take said real property subject to such obligations.

SECURITY

10. The Developer will furnish to the Town, not later than the date of the Developer's application for approval of any phase of the P.D. by Shelby County, the Security as defined hereinabove.

11. After Substantial Completion, if there is any necessity to amend the approved sewer construction plans reflecting the as-built improvements, the Developer shall prepare such amendment, obtain the approval of the Town Engineer and the Development Director of the Town and pay any additional fees associated therewith. Upon application of the Developer and approval of the Board of Mayor and Aldermen of the Town, the amount of the Security may be reduced to the cost, as estimated by the Town, of uncompleted requirements relative to the Primary System or the Secondary System, respectively, plus a reasonable sum to cover Developer's warranty obligations hereunder.

12. Although the amount of the Security may be less than the total cost of compliance by Developer with all of Developer's obligations hereunder, it is understood and agreed that the

Security, subject to its limit, is to furnish security for the performance of all of the Developer's obligations hereunder but that such obligations are not limited by the amount of such Security. The Security shall remain in force through the date of Final Acceptance, although same may be reduced from time to time as provided herein. All collection expenses, court costs and attorney's fees incurred by the Town in connection with collection under the Security shall be paid by the Developer and such obligation shall be secured by the Security. The Town may charge a reasonable administrative fee in connection with collecting under the Security. If the Town performs any of the Developer's obligations under the Contract, the Town shall be entitled to recover the cost thereof plus interest thereon of ten percent (10%) per annum until reimbursed.

13. The form and substance of any Security shall be subject to the approval of the Town Attorney. The Security shall be attached as an addendum to this Contract guaranteeing, to the extent of the Security, the faithful performance of this Contract by the Developer.

INSURANCE

14. The Developer shall purchase and maintain comprehensive general liability and other insurance that shall insure against claims arising out of the Developer's performance under this Contract, whether such claims arise out of the actions of the Developer, any subcontractor of the Developer, their employees, agents or independent contractors or anyone for whose acts any of them may be liable, including, without limitation:

    a. Claims brought under worker's compensation; provided, however, if Developer has no employees who are eligible to be covered under worker's compensation insurance, the Developer shall not be required to furnish insurance against worker's compensation but shall require the party(s) contracting with Developer to perform work on the P.D. to furnish evidence of such insurance for the employees of same;

    b. Claims for the personal injury, occupational illness or death of the Developer's employees, if any;

    c. Claims for the personal injury, illness or death of any person other than the Developer's employees or agents;

    d. Claims for injury to or destruction of tangible property, including loss of use resulting therefrom;

    e. Claims for property damage or personal injury or death of any person arising out of the ownership, maintenance or use of any motor vehicle; and,

    f. Claims by third parties for personal injury and property damage arising out of the Developer's failure to comply with the Developer's obligations under this Contract.

15. The insurance coverage required herein shall include the coverage specified above with policy limits of not less than $1,000,000 Combined Single Limit general liability and $500,000 Combined Single Limit automobile liability per occurrence. The comprehensive general liability insurance coverage shall include completed operations insurance coverage

and liability insurance applicable to the Developer's obligations under this Contract. Each insurance policy shall contain a provision stating that the insurer will give the Town thirty (30) days prior written notice of its intent to cancel or materially change the policy. All such insurance shall remain in effect until the Town issues its written notice of Final Acceptance and release of Security of the completed Contract. In addition, the Developer shall maintain completed operations insurance for at least one (1) year after the Town issues its written notice of Final Acceptance and release of Security. The Developer shall furnish the Town with evidence of the continuation of all such insurance at the time of issuance of the notice of Final Acceptance and release of Security.

16. Prior to the Effective Date, the Developer will furnish to the Town a certificate of insurance evidencing the required coverages.

17. The furnishing of the aforesaid insurance shall not relieve the Developer of its obligation to indemnify the Town in accordance with the provisions of this Contract.

TIME SCHEDULE

18. Intentionally Deleted.

19. The Developer must pay all fees, furnish the Security, and provide the required certificate of insurance on or before, as applicable, the commencement of construction of the Primary System and the approval for each phase of the P.D., all in accordance with the applicable provisions of this Contract.

20. The failure of the Developer to commence Construction of the Primary System within one (1) year of the Effective Date may result in the approval of the Board of Mayor and Aldermen being withdrawn.

21. The Developer shall substantially complete each phase of the P.D. on a timely schedule and in an expeditious manner, with the date of Substantial Completion to be not later than twenty-four (24) months from the approval date for each phase of the P.D.

    a. The Developer agrees that if due to unforeseen circumstances it is unable to complete all work included in this Contract within the time specified herein, it will submit a written request for extension of the Contract period to the Town at least sixty (60) days prior to the expiration of the existing Contract period, specifying the reason for its failure to complete the work as agreed, and a prospective date for such completion.

    b. The Developer agrees that if the Security furnished to secure the obligations of the Developer under this Contract, due to inflation and/or rising costs, previous errors in estimation, or otherwise, is inadequate to secure such obligations at the time an extension of time is sought, it will provide additional security to bring the Security amount in line with current cost projections made by the Town Engineer.

    c. The Town will not unreasonably withhold approval of extensions of time where the Developer has complied with the requirements of notice to the Town and provided the required additional Security, if any is needed.

22. The Developer agrees that its failure to follow the extension of time procedure provided herein shall constitute a breach of this Contract. The Developer agrees that should it fail to complete any part of the work outlined in this Contract in a good and workmanlike manner, as approved by the Town Engineer, the Town shall reserve the right to withhold and/or withdraw additional sewer service within the P.D. until all items of this Contract have been fulfilled by the Developer.

23. The Developer shall provide the Town with a copy of the final construction plans for the Sewer Improvements using State Plane Coordinate System with NAD – 83 datum on disk or CD in DXF format (AutoCAD Release 14 or more current) prior to Final Acceptance of the Sewer Improvements for each phase of the P.D. All MTEXT must be exploded.

24. The Developer shall furnish to the Town as-built plans, on a reproducible, stable media, which plans shall show the sanitary sewer, storm drainage system, grading, water main and service lines and streets within the P.D. and from the P.D. to the point of terminus of the Sewer Improvements before the Town shall issue Final Acceptance for the phase for which Final Acceptance is sought. In addition to the plans furnished on reproducible media, the Developer shall provide a scanned copy of the as-built plans as a TIF image on CD and a DXF copy (AutoCAD Release 14 or more current) of the as-built plans on CD.

25. The Developer shall also furnish, in writing, the itemized as-built construction cost of all public improvements prior to Final Acceptance of any phase of the P.D.

WARRANTY

26. The Developer is required to complete the Sewer Improvements, which are ultimately to be accepted by the Town for perpetual maintenance, and all other improvements required by the Town relative to the P.D., in accordance with the terms of this Contract. Further, the Developer is to correct any defects or failures in all of such improvements that occur within one (1) year of the Substantial Completion date for each phase of the P.D. Any defect first appearing within the applicable one (1) year period shall be corrected by the Developer; and thereafter the Developer shall correct any defect again occurring in or relating to what was previously corrected within a one (1) year period commencing from the date of approval by the Town Engineer of such correction. If the defect reoccurs within any one (1) year of its repair, the Developer shall remain obligated to correct it until the condition is satisfactory to the Town after one (1) year from the date of its last repair.

27. No sooner than one year after the Substantial Completion date for each phase of the P.D., the Developer shall so notify the Town Engineer, and the Town Engineer, or his designee, shall inspect the required Sewer Improvements to determine any defects or failures of the same. If no defects or failures are found, the Town Engineer shall report the same to the Board of Mayor and Aldermen at a regular or special meeting within thirty (30) days of the date of request of said inspection, unless utilizing due diligence longer time is necessary. The Board of Mayor and Aldermen, provided it agrees with the Town Engineer, shall approve the final release of the Security for the Primary System or, as the case may be, that particular P.D. phase, which shall constitute Final Acceptance of said phase. If defects or failures are found as a result of the aforesaid inspection, a written notification outlining deficiencies to be

corrected shall be provided to the Developer along with the time period for corrections, not to exceed sixty (60) days. Within seven (7) days of notification by the Developer that such corrections have been made or the expiration of the time period, whichever occurs first, the Town Engineer shall re-inspect for correction of defects and failures. If all deficiencies have not been corrected, the Town Engineer shall provide an updated written notification of deficiencies and the Developer shall have thirty (30) days to make the remaining corrections. If all corrections are not made at this time, the Town may demand payment on the Security, and, upon collection, shall proceed to make the corrections. If and when the Developer or the Town, as the case may be, has corrected all failures and defects, and a period of one (1) year has expired from the date of such corrections without defects again appearing in the corrected work, the Town Engineer shall report the same to the Board of Mayor and Aldermen at a regular or special meeting within thirty (30) days of the date of said re-inspection. The Board of Mayor and Aldermen, provided it agrees with the Town Engineer, shall approve the final release of the Security, which shall constitute Final Acceptance of the Sewer Improvements associated with that particular P.D. phase.

28. It is the intention of the parties hereto that any Sewer Improvements required of the Developer relative to the P.D. which was found to be satisfactory by the Town Engineer upon inspection as provided in Section 27 shall thereafter be the obligation of the Town to maintain. However, any such Sewer Improvements found to be unsatisfactory by the Town Engineer upon the initial inspection as provided in Section 27 or any later inspection made pursuant to Section 27 shall not be obligation of the Town to maintain until same remains satisfactory to the Town for a period of one (1) year from the date it was inspected and found to be satisfactory by the Town Engineer.

29. At any time following one (1) year from the date of the Substantial Completion for the Primary System or secondary system for each phase of P.D. development, as the case may be, the Town Engineer may recommend to the Board of Mayor and Aldermen that a portion of the Security be released based upon the Town Engineer's estimation of the needed Security to ensure that funds will be available to correct any then outstanding defects in the Sewer Improvements or to correct any defects which have been corrected but may reoccur.

REQUIRED IMPROVEMENTS AND RELATED FEES

30. The Developer shall pay the Town a **"Pump Station Maintenance Fee"**, which amount is based upon a fee of $15,000.00 per lift station or the applicable fee at the time of approval for each of the lift stations associated with the Primary System and the Secondary System, respectively. The Developer shall pay this Pump Station Maintenance Fee at the time the plan for each lift station is approved by the Town.

31. In addition to the Pump Station Maintenance Fee described in this Contract in the immediately foregoing paragraph, the Developer shall pay the Town the Sewer Development Fee, which the Town shall assess on a per-lot basis for single family residences and which fee shall not exceed an initial amount of $1,500.00 per lot. The fee for any business establishment shall be based on a residential lot equivalent computed in accordance with the Town's usual practices. The Developer agrees to pay the Sewer Development Fee to the

Town as the Developer makes application to Shelby County for approval of each phase of the P.D. and in advance of any construction in any phase of the P.D.

32. It is the intention hereof that the Sewer Improvements shall constitute a State of Tennessee-approved outfall sewage system complete with necessary sewer mains, manholes, and service laterals in the Project and pump stations and force mains as approved by the Town Engineer upon approval of the plans and specifications for the Project. The Developer shall bear the entire cost thereof.

33. The Developer agrees to bear the cost of all engineering, inspection and laboratory testing costs procured by the Developer incidental to the sewer service in or to the Development; provided, however, that the Town reserves the right to inspect all such testing; and, provided further that if the Town deems it necessary to have additional work of such nature performed, the Developer will bear such costs.

ADMINISTRATIVE FEES TO BE PAID PRIOR TO THE EXECUTION OF THIS CONTRACT

Plans Review Fees

34. The Developer agrees to pay to the Town the sum of $100 base fee plus $ 25 per lot utilizing the Sewer Improvements, which represents the development plans review fee. Such fee shall be paid before commencement of each respective phase of the P.D. Plans review fees are subject to adjustment by the Board of Mayor and Alderman by Resolution.

Development Inspection Fee

35. The Developer agrees to pay to the Town the sum of $250 base fee plus $50 per lot utilizing the Sewer Improvements, which sum represents the development inspection fee. Such fee shall be paid before commencement of each respective phase of the P.D. Neither observations by the Town Engineer and Construction Inspectors, nor inspections, tests or approvals by others shall relieve the Developer from its obligation to perform work in accordance with the terms of this Contract. Inspection fees are subject to adjustment by the Board of Mayor and Alderman by Resolution.

Development Agreement Preparation Fee

36. The Developer agrees to pay to the Town the sum of **One Thousand Five Hundred and no/100 Dollars ($1,500.00)**, which sum represents the development agreement preparation fee, which shall be paid prior to the execution of this Contract.

OTHER ADMINISTRATIVE FEES TO BE PAID AS APPLICABLE

37. The Developer agrees to pay to the Town the sum of **Two Hundred and Fifty Dollars** ($250), which sum represents the fee for any modifications to this Contract, including, but not limited to, time extensions, addendums, amendments and the like. The Developer shall pay the Contract modification fee for each modification prior to the execution of any document prepared in connection with a modification to this Contract.

MISCELLANEOUS CONDITIONS

38. The Developer agrees that it will grant the necessary easements and rights-of-way across its property necessary to effectuate the requirements of this Contract, without expense to the Town of Collierville and will waive any claim for damages. Any off-site easements and/or rights-of-way owned by others but required for the Project must be obtained and recorded prior to Contract execution or contract assignment.

39. It is understood and agreed that the Town is not and could not be expected to oversee, supervise and/or direct the construction of all construction and improvements contemplated hereunder. Neither is the Town Engineer vested with the original design responsibility nor the means to formally survey elevations, capacity, structural integrity, type, adequacy or the locations of improvements at every stage of the construction process. The Town Engineer is vested with the right of periodic inspections, final approval and stop work order as a measure of secondary or subsequent enforcement. The Developer now has and shall retain the responsibility to properly anticipate, survey, design and construct the development improvements and give full assurance that same shall not adversely affect the flow of surface water from or upon any property. In providing technical assistance, plan and design review, the Town does not and shall not relieve the Developer from or accept any liability from the Developer. The Developer will provide his own Project Engineer whose duties and responsibilities are explained in the General Conditions of the Town of Collierville Construction Specifications.

40. In emergencies affecting the safety or protection of persons or the work or property at the Project Site or adjacent thereto, the Developer, without special instruction or authorization from the Town, is obligated to act to prevent threatened damage, injury or loss. If the Town has to use its resources in an emergency affecting the Development, it is agreed that the Town will keep a record of costs associated therewith and will be reimbursed by Developer.

41. The Developer agrees that the Town shall have the right to enter the Project Site and make emergency repairs to any improvements when the health and safety of the general public requires it. The Developer will reimburse the Town for the reasonable cost incurred by it in making such repairs.

42. Prior to Final Acceptance of each phase of the Sewer Improvements by the Town, the Developer shall deliver to the Town an affidavit certifying that all subcontractors and material suppliers furnishing labor and/or material for the improvements required under this Contract have been paid in full. The Developer shall also provide a release of all liens, and of the right to claim liens, from all sub-contractors and material suppliers furnishing labor or materials for the development.

43. The Developer shall be responsible for the cost of any and all relocation, adjustment, modification, installation and/or removal of utilities, streets, curbs, gutters, sidewalks, drainage and all other improvements made necessary by the development of the P.D. and the installation of the Sewer Improvements, both on and off site.

44. Indemnity. The Developer will indemnify and hold the Town harmless against all claims that may arise out of or result from the Developer's performance under this Contract, whether such claims arise out of the actions of the Developer, any subcontractor of the Developer, or anyone directly or indirectly employed by either of them. This indemnity agreement includes, without limitation, all tort claims, both intentional and otherwise, and all claims based upon any right of recovery for property damage, personal injuries, death, damages caused by downstream deposits, sediment or debris from drainage, damages resulting from the Developer changing the volume or velocity of water leaving the Developer's property and entering upon the property of others, and claims under any statutes, Federal or state, relative to water, drainage and/or wetlands, and reasonable attorney's fees and costs incurred by the Town in defending itself as a result of the aforesaid and/or enforcing this Contract.

45. Safety. The Developer shall maintain barricades, fences, guards and flagmen as reasonably necessary to ensure the safety of all persons at or near the Project Site during construction. All construction material, including, without limitation, mud, silt, dirt and gravel, shall be kept off existing streets at all times. In the event such mud, silt, dirt, gravel or other construction material is washed, blown or carried into an existing street, the Developer shall take immediate steps to remove such materials. If the Developer does not remove such materials after notification by the Town, and the Town deems it necessary to clean the affected streets, the Developer agrees to reimburse the Town for all such cleaning expenses.

46. The use of the neuter pronoun herein shall include the neuter and both genders as the context shall require.

47. If litigation ensues with respect to this Contract and the Town prevails therein, the Town shall be entitled to recover from the Developer its reasonable attorney's fees and the costs and expenses of such litigation, including same related to any appeal. The court(s) before which such litigation is pending shall determine whether the Town prevailed and the amount of such fees, costs, and expenses to be recovered by the Town as a result of prevailing; and, if the Town prevails in part, but not in whole, an equitable award of its attorney's fees and expenses shall be made by the court(s). The same provision as immediately aforesaid shall be applicable to any litigation necessary to establish the Town's right to recover under the Security. The Security shall cover all of the Developer's obligations under this Contract, including, without limitation, the obligation of the Developer to pay the fees, costs and expenses of the Town as provided for in this Section of the Contract.

48. Interpretation and Severability. If any provision of this Contract is held to be unlawful, invalid or unenforceable under present or future laws effective during the terms hereof, such provisions shall be fully severable and this Contract shall be construed and enforced as if such unlawful, invalid or unenforceable provision was not a part of this contract. Furthermore, if any provision of this Contract is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which rends it valid.

49. Construction of Contract. Each party has received and had the opportunity to review this Contract, and each party has had the opportunity, whether exercised or not, to have each

respective party's attorney review this Contract, and, accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract.

50. No Waiver. The failure of the Town to insist upon prompt and strict performance of any of the terms, conditions or undertakings of this Contract, or to exercise any right herein conferred, in any one or more instances, shall not be construed as a waiver of the same or any other term, condition, undertaking or right.

51. Amendments and Modification. This Contract shall not be modified in any manner, except by an instrument in writing executed by or on behalf of all parties.

52. Authority to Execute. Town and Developer each warrant and represent that the party signing this Contract on behalf of each has authority to enter into this Contract and to bind the Town and Developer, respectively, to the terms, covenants and conditions contained herein. Each party shall deliver to the other, upon request, all documents reasonably requested by the other evidencing such authority, including a copy of all resolutions, consents or minutes reflecting the authority of persons or parties to enter into agreements on behalf of such party.

53. Notices. All notices, demands and requests required or permitted by this Contract shall be in writing (including telecopy communications) and shall be sent by facsimile transmission, air or other courier, or hand delivery, as follows:

a. To: TOWN
Town of Collierville
Attn: Town Engineer
500 Poplar View Parkway
Collierville, Tennessee 38017
Telephone: 901.457.2340
Fax: 901.457.2354
With Required Copy To:
Director of Development
At same address and fax number as above.

b. To: DEVELOPER
Attn.: Steve Dunavant
5100 Poplar Avenue, 30th Floor
Memphis, Tennessee 38137
Telephone: 901-767-9024
Fax: 901-685-5585

Any notice, demand or request sent by facsimile transmission shall be deemed given for all purposes under this Contract when properly transmitted by telecommunication device. Any notice, demand or request which is hand delivered or sent by air or other courier

shall be deemed given for all purposes under this Agreement when delivered to the intended address.

54. Any party to this Contract may change such party's address for the purpose of notices, demands and requests required or permitted under this Contract by providing written notice of such change of address to the other party, which change of address shall only be effective when notice of the change is actually received by the party who thereafter sends any notice, demand or request.

55. Choice of Law. This Contract is being executed and delivered and is intended to be performed in the State of Tennessee, and the laws (without regard to principles of conflicts of law) of the State of Tennessee shall govern the rights and duties of the parties hereto in the validity, construction, enforcement and interpretation hereof.

56. Overall Fee Summary. See Exhibit "A" attached hereto.

57. Supplemental Conditions/Additional Requirements.

N/A

58. Joinder of Owner. In the event that the Developer is not the owner of the Project Site, the owner joins in this Contract and by the owner's execution of this Contract the owner is jointly and severally liable for the representations, warranties, covenants, agreements and indemnities as expressly set forth in this Contract.

WITNESS the due execution hereof.

TOWN OF COLLIERVILLE

By: _____
Linda Kerley, Mayor

Date[1]: August 27, 2004

ATTEST:

By: _____
Town Clerk/Recorder

APPROVED AS TO FORM AND CONTENT:

_____
Town Attorney

SPRING CREEK, L.L.C.,
Developer and Owner

By: _____

Title: CHIEF MANAGER

Date[1]: 9/23/04

TRAIL PARTNERS, LLC,
Developer and Owner

By: _____

Title: CHIEF MANAGER

Date[1]: 9/23/04

SCRC GOLF COURSE LAND, LLC,
Developer and Owner

By: _____

Title: CHIEF MANAGER

Date[1]: 9/23/04

[1] The Effective Date hereof shall be the date upon which the last to sign of the Mayor and Developer (and Owner, if applicable) executes this Contract, which date shall be entered on the first page hereof.

EXHIBIT A

SPRING CREEK RANCH SANITARY SEWER
OVERALL FEE SUMMARY

	Phase I	Phase II 8 Lots	Golf House & Cabins Phase	Phase III
Pump Station Maintenance Fee $15,000/station (subject to adjustment)	N/A	$30,000.00		
Sewer Development Fee $1,500/lot (subject to adjustment)	N/A	$12,000.00		
Plans Review Fee $100 base fee + $25/lot	N/A	$300.00		
Development Construction Inspection Fee $250 base fee + $50/lot	N/A	$650.00		
Development Agreement Preparation Fee	N/A	$1,500.00		
Development Agreement Modification Fee	N/A	N/A		
Total per Phase	***$0.00***	***$44,450.00***	***$0.00***	***$0.00***